TRUSTS — FRAUD — CONSTRUCTIVE TRUST. — A was about to make a gratuitous transfer of land to X. B, by fraud, induced A to convey the property to an innocent purchaser in consideration of certain notes and a mortgage on the property given to B. *Held*, that X is not entitled in equity to have the notes and mortgage assigned to her by B. *Sipes* v. *Decker*, 78 N. W. Rep. 769 (Wis.).

If B had by fraud induced A to convey the land in question to her, she would have been compelled to hold it as constructive trustee for X. *Segrave* v. *Kirwin*, Beat. 157; *Bulkley* v. *Wilford*, 2 Cl. & Fin. 177. Had she in breach of that trust conveyed the *res* to a purchaser for value without notice she would have held the proceeds of the transaction upon a like trust. *Trevelyn* v. *White*, 1 Beav. 589; *Cheney* v. *Gleason*, 117 Mass. 557. The fact that the conveyance was made directly to an innocent vendee does not change the principle involved or affect the rights and duties of the parties concerned. B, through her fraud, has got into her control the product of property which would otherwise have gone to X, and such product in good conscience belongs to X. Therefore, the court should, in accordance with established rules of equity and in analogy to decided cases, have declared B a trustee of these securities for the grantor's intended beneficiary.

TRUSTS — PAROL AGREEMENT — CONSTRUCTIVE TRUST. — The plaintiff purchased and had conveyed to the defendant, his wife, a tract of land which the wife orally agreed to hold in trust for him. *Held*, that the plaintiff is not entitled to have the land conveyed to him. *Murray* v. *Murray*, 53 N. E. Rep. 946 (Ind.).

It is well settled in Indiana that a resulting trust does not arise where the husband pays the purchase price for land and the title is vested in the wife, although there is no statute forbidding it. *Lochenour* v. *Lochenour*, 61 Ind. 595; *Montgomery* v. *Craig*, 128 Ind. 48. The court might, however, have given the land to the plaintiff upon another theory. It is held in England that a grantee of land upon an oral trust to reconvey, who refuses to fulfil his obligation, must hold as constructive trustee for the grantor. *Davies* v. *Otty*, 35 Beav. 208; *Haigh* v. *Kaye*, L. R. 7 Ch. 469. The plaintiff in the principal case was in substantially the same position as the grantor in the English cases, and was entitled to a like relief if they are sound. It is believed that they are. The courts do not enforce an express trust in violation of the Statute of Frauds. They create a new trust upon the ground that the grantee shall not take advantage of the statute to work a fraud, but must either perform his undertaking or surrender the land to him who is in equity best entitled to it. This doctrine has been generally repudiated in this country, but there has been some tendency recently to adopt it in cases like the present. *Gage* v. *Gage*, 31 N. Y. Supp. 903.

REVIEWS.

THE NECESSITY FOR CRIMINAL APPEAL as illustrated by the Maybrick Case. Edited by J. H. Levy. London. 1899. pp. vii, 609.

The chief value of this book is the verbatim report of Mrs. Maybrick's trial, now for the first time published in convenient form. Both in itself and in the legal circumstances that surround it, this is one of the most remarkable trials of the century, and it well repays careful study.

The five hundred pages of trial, in the intention of the editor, are merely illustrative of the need of some court for the revision of convictions of crime. In further emphasis of this need, he has appended statements of the law of many countries bearing on the question of revision. This part of the book is perhaps neither so useful nor so convincing as the editor hoped. Revision of a criminal conviction may mean either of two things, — revision of the facts, or a new trial because of error of law. In foreign systems of law these two things are not clearly distinguished, as the statements in this book show; in our system of law the distinction is fundamental and necessary. The desire for a Court of Criminal Appeal which shall revise findings of fact is a desire with which most lawyers will not greatly sympathize. Why should one accused of crime, who has

had the advantage on his trial of the extremely liberal provisions of our law, and has been convicted by a jury, claim the advantage of a second chance before a bench of judges? Trial by jury is reprobated by some more or less perfectly informed persons, but never, probably, on the ground that it is too apt to convict the innocent. If the jury is not to be abandoned, it would seem a sufficiently liberal tribunal for the determination of fact. For revision because of errors of law, on the other hand, a court ought surely to be provided; and the chief defect of the English judiciary to-day is that for error of law in the course of the trial a convicted person cannot secure a new trial. The absence of a Court of Criminal Appeal on points of law is a glaring defect of English justice.

Both these points are emphasized by the case of Florence Maybrick. That the woman was morally guilty of the murder of her husband is probable on the evidence; whether a verdict of guilty could legally be justified on the evidence is doubtful; but that she had a fair and legal trial no lawyer, on reading the report of the trial, could possibly affirm. In an American court a hundred valid exceptions would have been taken to the judge's charge, and no lawyer would have consented to argue them for the prosecution. The conviction is in fact a sombre monument of the decay of a great intellect. If a Court of Criminal Appeal for revision of errors of law had existed at the time of the trial, Mrs. Maybrick would have obtained a new trial; she could not ask for more than that. If revision on the facts had been legally attainable, she would have had a slender chance of acquittal. J. H. B. Jr.

A Treatise on the Law of Evidence. By Simon Greenleaf. Sixteenth Edition, revised, enlarged, and annotated by John Henry Wigmore. Boston: Little, Brown & Co. 1899. pp. cxxxiv, 993.

Few text-books have had so great an influence in moulding a branch of the law as Greenleaf's Evidence. Since its first appearance in 1842 it has been constantly followed by the courts, and it may be said that very much of it — errors and all — has been assimilated into American law. But certain factors have worked great changes in the law of evidence since the time of its publication: broad statutory changes have cut out whole blocks of the law, there has been a surprising extension of certain principles in new and unexpected directions, and again careful study of the subject has altered — nay, subverted — old ideas of its principles. And in the mean time the classic of the subject has passed through constant editions with surprisingly little change save the piling up of citations. With the full consciousness of these conditions Mr. Wigmore has prepared the sixteenth edition of Greenleaf — and it is more than a re-editing of the book, it is a remoulding of it. The substantial part of Greenleaf — so much as has become of the tissue of the law — the editor has left in its old form. This he has surrounded with new sections which amplify, explain, and correct it. Where the original text is entirely inadequate or obsolete, it is relegated to appendices, and entire new chapters are inserted. In his exposition of the principles of the law of evidence the editor has largely followed the work of Professor Thayer. In the general plan, as well as in detail, — and he is the first to claim it, — he has made constant use of Professor Thayer's results. The amount of work in Mr. Wigmore's edition is monumental, more, it seems, than if he had written an entirely new treatise. Not only is the law of evidence carefully examined and minutely worked